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Leason Ellis LLP  
81 Main Street  
Suite 503  
White Plains NY 10601

**MAILED**

**AUG 18 2011**

**OFFICE OF PETITIONS**

In re Patent of Suzuki et al. :  
Patent No. 6,561,716 :  
Issue Date: May 13, 2003 :  
Application No. 09/762,319 :  
Filed: February 6, 2001 :  
Attorney Docket No. M1596-232/ 4400/800- :  
001 :

**REQUEST FOR INFORMATION**

A renewed petition under 37 CFR 1.378(b), was filed on July 27, 2011, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition asserts the expiration of the patent was the result of an error by Perry Moy, a paralegal in the firm's Intake/Maintenance Fee Department, during 2005.

During 2005,

1. Ms. Marie Collazo was the Administrator of Patent Services,
2. Ms. Flynn Barrison was Collazo's deputy, and
3. Ms. Lori Cindrich headed the Input/Maintenance Fee Department.

Petitioner has not filed:

1. An affidavit, declaration, or statement by Moy,
2. An affidavit, declaration, or statement by Collazo,
3. An affidavit, declaration, or statement by Barrison, or
4. An affidavit, declaration, or statement by Cindrich.

The petition is signed by Melvin Garner. Page 3 of the petition states,

[During 2005, Garner] was a member of the Procedure Committee of Darby and worked on setting up a number of procedures and integrating them with the firm's electronic docketing system.

In the petition, Garner states previously supplied information “was based on information and belief,” and states, “based on my knowledge and belief I supplement the foregoing information.” Pages 2-3.

The petition fails to indicate which assertions in the petition are based on personal knowledge and a separate affidavit, declaration, or statement by Garner in support of the petition has not been filed. As a result, the Office is unable to determine the extent to which various assertions are based on personal knowledge, inferences, speculations, or conjectures. In other words, clarification of the record is necessary.

### Questions

1. The instant petition asserts, “An attempt was made to locate him, but it was unsuccessful.” Petition, p. 2.
  - A. Is the assertion based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
2. The petition asserts the attempt to contact Moy “included a call to his last known employer, only to find out that he is no longer employed there.” *Ibid.*
  - A. Is the assertion based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
  - C. What other steps were taken to contact Moy?
3. The petition asserts, “Mr. Moy was responsible for paying hundreds of maintenance fees, so it is not likely he would have any memory of this particular one.” *Ibid.*

Does Garner believe Moy is unlikely to have any knowledge of any relevant facts, such as facts involving past training or procedures? If yes, why?
4. The petition asserts Moy was assigned to handle quotes the following language from a prior petition: “One of the paralegals, Perry Moy, was assigned to handle the payment.” *Id.* at 3.
  - A. Is the assertion Moy was assigned to handle the payment based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
5. The petition asserts “Mr. Moy was well trained in the procedures that had been established.” *Ibid.* (quoting prior petition).

- A. Is the assertion based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
6. The petition asserts Mr. Moy “had paid numerous maintenance fees in the past without incident.” *Ibid*. The petition also asserts,
- Darby paid literally hundreds of maintenance fees in this time period, and this is the only one where it appears that Mr. Moy made an error. The firm did have two or three other incidents, but these involved other people and other procedures.
- Id.* at 6.
- A. Is the assertion Moy had paid numerous maintenance fees in the past without incident based on personal knowledge?
  - B. If the assertion Moy had paid numerous maintenance fees without incident is not based on personal knowledge, what is the factual basis for the assertion?
  - C. How does Garner define “incident”? Specifically, what errors by Moy when handling maintenance fees in the past not fall within the Garner’s definition of “incident”?
  - D. When Garner states this case is the only case where it appears Moy made a mistake during “this time period”, exactly what period of time is Garner referring to? For example, is he referring to Moy’s entire employment with Darby?
  - E. To what extent is the assertion that it appears Moy did not make any other errors based on person knowledge?
  - F. What steps, if any, have been taken by Petitioner to determine if Moy made errors in other cases? For example, has Petitioner reviewed Moy’s processing of other maintenance fees during the weeks preceding Moy’s “error” and the weeks following the “error” to determine if Moy made a similar error in any other case?
7. A review of Exhibit A indicates the client instructed Darby to pay the maintenance fee for the instant patent *and* instructed Darby to pay the “Tax Year: 12” maintenance fee for Patent No. 5,424,793. Office records indicate the 11.5 year maintenance fee was not paid for Patent No. 5,424,793.
- A. Please explain why the maintenance fee was not paid for Patent No. 5,424,793,
  - B. Which assertions in the requested explanation are not based on personal knowledge, and what is the factual basis for each of those assertions?
8. The petition asserts, “[I]t appears that Mr. Moy had been with the ... Intake/Maintenance Fee Department for about two years.” *Id* at 5. What is the factual basis for the assertion?

9. The petition states, “[Cindrich] personally trained Mr. Moy for about six months before he was allowed to operate independently.” *Ibid.*

- A. Is the assertion Moy was personally trained by Cindrich for about six months based on personal knowledge?
- B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?

10. Petitioner has not supplied an affidavit, statement, or declaration from Cindrich.

Has Cindrich been contacted to obtain information pertaining to the training received by Moy, the procedures Moy was instructed to follow, or the quality of Moy’s work? If not, why not?

11. The petition asserts Moy failed to send instructions to pay the fee to MDC. The petition also indicates such instructions were sent by e-mail and that Darby previously decommissioned and sold the e-mail servers.

- A. Is the assertion Moy failed to send instructions to pay the fee based on personal knowledge?
- B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
- C. What steps have been taken to verify Moy failed to send instructions to MDC to pay the fee?

12. The petition asserts Moy changed the database to indicate the maintenance fee had been paid.

- A. Is the assertion based on Garner’s personal knowledge?
- B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
- C. On what date was the database changed to indicate the maintenance fee had been paid?

13. The petition asserts paralegals would not update Darby’s database to show a fee had been paid until receiving confirmation the fee had been paid from MDC.

- A. Is the assertion based on personal knowledge?
- B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?

14. The petition asserts Moy informed the Account Department the maintenance fee had been paid for the instant patent.

- A. Is the assertion based on personal knowledge?

- B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
14. The petition asserts MDC would obtain information from Darby's database to determine fees due for a quarter.
  - A. Is the assertion MDC would obtain information from Darby's database to determine the fees due for a quarter based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
15. The petition asserts MDC would send Darby a list of cases where maintenance fees or annuities were due during the next quarter.
  - A. Is the assertion based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
16. The petition asserts Darby would check the list of cases received from MDC against a list generated from Darby's database.
  - A. Is the assertion based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
17. The petition asserts paralegals would notify the accounting department of the firm upon receiving confirmation a fee had been paid from MDC.
  - A. Is the assertion based on personal knowledge?
  - B. If the assertion is not based on personal knowledge, what is the factual basis for the assertion?
  - C. What exact method was used to
18. The petition asserts "[t]here is no evidence that Mr. Moy 'had been an unreliable or mistake-prone employee prior to misdocketing.'" Id. at 12 (citation omitted).

Is Garner asserting no evidence that Mr. Moy had been unreliable or mistake-prone exists, or simply asserting he is not aware of any such evidence?
19. The first, second, and third entries on the second page of Exhibit A are date-stamped July 26, 2006. The third entry is date-stamped June 26, 2006.
  - A. Who added each date stamp?
  - B. What does each date stamp mean?

20. Exhibit B is a printout of a PATTSY screen listing a “Darby#” of “000K683-US0,” a “CREF” of “FB010003PUS,” and an “AREF” of M1596-232.

Exhibit C is a copy of an invoice from Darby to the client. The petition asserts the invoice pertains to the instant patent. However, the invoice does not include a patent number, an application number, a “Darby#,” a “CREF,” or a “AREF.”

What is the factual basis for the conclusion the invoice pertains to the instant patent?

21. The invoice appears to indicate the invoice involves “Costs Advanced” on “08/31/06.”
- A. If the date Moy informed the Accounting Department the maintenance fee was paid is July 26, 2007, why does the invoice appear to state costs were advanced on August 31, 2006?
22. In addition to listing “08/31/06” below the heading “Costs Advanced,” the invoice lists an “Invoice Date” of “August 31, 2006.” The invoice also includes a date-stamp indicating the invoice was received by the client on August 30, 2006. Is petitioner aware of the reason the date of receipt of the invoice is earlier than the date of issuance of the invoice?

Petitioner should submit the requested information within TWO MONTHS of the mailing date of this letter. Extensions of time may not be obtained. No additional fee is due for a response to the instant request for information. The response to this Requirement for Information should include a cover letter entitled “Response to Request for Information.” The failure to file a reply to the instant Request for Information will be interpreted as a desire to no longer pursue reinstatement of the patent and the Office will give no further consideration to the matter.

Further correspondence with respect to this matter should be addressed as follows:


By Mail: Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

By Hand: U. S. Patent and Trademark Office  
Customer Service Window, Mail Stop Petitions  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

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                          (for help using EFS-Web call the  
                          Patent Electronic Business Center  
                          at (866) 217-9197)

Telephone inquiries should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley  
Senior Petitions Attorney  
Office of Petitions